IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN DELLORTO,	)	
	)	
Plaintiff,	)	
	)	
v	)	09 CH 13571
	)	
JODY P. WEIS, SUPERINTENDENT OF THE CHICAGO POLICE DEPARTMENT, AND THE CITY OF CHICAGO POLICE BOARD,	)	
	)	
Defendants.	)	

ORDER

THIS MATTER coming to be heard on Plaintiff, JOHN DELLORTO's, Petition for Administrative Review, the parties having submitted written briefs and the Court having entertained oral arguments,

IT IS HEREBY ORDERED, based upon the foregoing, the parties' submissions and administrative record, that:

Plaintiff's complaint is granted in part and the termination of plaintiff is reversed but other discipline may be imposed for the proven charges. This matter is remanded to the Board for the imposition of discipline, other than termination, and may include an extended suspension and reinstatement only upon such conditions that the Board finds based upon the record are reasonable and appropriate.

Dated: September 30, 2009

Entered:

ENTERED

SEP 30 2009

Richard J. Billik, Jr. JUDGE

RICHARD J. BILLIK - 1585

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Dellorto v. Police Board of the City of Chicago
09CH 13571

RULING

This cause coming before the court on a petition filed by petitioner/plaintiff, John Dellorto ("Dellorto," "petitioner" or "plaintiff"), for administrative review against defendants, the Police Board of the City of Chicago, ("Board") and Superintendent of the Chicago Police Department, Jody P. Weis ("Superintendent"); the administrative record having been filed by the Superintendent; the matter having been briefed by petitioner and the Superintendent; a hearing having been held; and the court, being fully advised in the matter, finds and/or states:

Petitioner was employed by the City of Chicago Police Department ("Department") as a police officer. On or about August 28, 2008, the Superintendent filed charges with the Board, seeking termination of petitioner for violating certain Rules and Regulations of the Department including:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 14: Making a false report, written or oral.

Rule 41: Disseminating, releasing, altering, defacing, or removing any Department record or information concerning police matters except as provided by Department orders. (See ex. A to answer).

A hearing officer appointed by the Board heard evidence on January 23, 2009. The hearing officer found that the above Rules and Regulations of the Department were violated based upon four charges brought against plaintiff that were proven. On February 25, 2009, the Board, adopting the findings of the hearing officer, issued its Decision discharging plaintiff from the Department. (See Board's Decision).

Plaintiff does not seem to challenge the hearing officer's findings on liability for the charges as being against the manifest weight of the evidence. Rather, plaintiff contends that he should not have been discharged from the Department because the punishment is "unduly harsh" in light of the violations proven and that the matter should be remanded to determine a "more appropriate sanction," suggesting a "suspension." (See plaintiff's brief in support at 4, 13). At the Board's hearing, plaintiff described his own actions as "silly" and "juvenile" and which constituted a "harmless foolish mistake." (Id. at 2, 12). In his submissions, plaintiff has explained that he "admittedly" used the "PC login number and passwords" of two officer colleagues "to login to certain data bases as a practical joke on his former partner . . . ." (Id. at 3). One of his colleagues was the district manager of the district he worked in and the other was the unit secretary. (Id.). As pointed out by plaintiff's attorney at the Board hearing, "what the City has really proven and what my client has admitted doing is going to the database and clicking a box, or changing some numbers, so that if someone were looking at it, they would be under the impression officer Dellorto was making a lot of arrests, issuing a lot of citations. He wasn't deleting any files. He wasn't making up names or tampering with any cases that were in the court system . . . . He admitted it as soon as he was confronted with this by the Internal Affairs Division. He accepted complete responsibility, said he was sorry, termed his own behavior as silly and, I think he said juvenile." (See R. tr. 104).

According to plaintiff, "discharge is inappropriate for two reasons. First, [plaintiff's] acts did not evidence substantial misconduct nor relate to the performance of his duties. Further, [plaintiff] has accepted full responsibility for his actions and has shown remorse and his prior record mitigates discharge." (See plaintiff's brief in support at 5).

Plaintiff submits that his actions did not "substantially affect or even involve the Department or the public, moreover, his actions did not benefit him in any way" and "the database was not information that was released to the public." (See plaintiff's brief in support at 7). Plaintiff also contends that the database "merely consisted of statistical data that commanders look at occasionally to view the activity of each officer." (Id.). Plaintiff further submits he has no disciplinary history and his conduct did not relate to the performance of his duties. (Id. at 9). According to plaintiff, the evidence indicates that his actions "did not injure his peer group relationships, nor did it cause his supervisor's (sic) to be unable to rely on him in future times." (Id. at 11). Additionally, plaintiff contends that he cooperated with the Internal Affairs Division investigators and admitted "going into the database and changing some numbers such that if someone looked it would appear as though he was making more arrests and issuing more citations than he actually was." (Id. at 12).

In response to plaintiff's claim for relief, defendant submits that the Board's Decision is not arbitrary, unreasonable or unrelated to the needs of the service and it should be affirmed. (See defendant's response at 7). According to defendant, "the facts are not in dispute that [plaintiff] utilized the PC login numbers and passwords of two other Department members without their permission to gain access to restricted information and alter his Officer Activity Report. This conduct was premeditated and deliberate and occurred over a long period of time, from January 2006 through November 2007." (See defendant's response at 7-8). Defendant submits that "[a]n officer's integrity is crucial to his duties as a police officer. Plaintiff most certainly failed in his duties as a Chicago Police Officer. He violated the trust of his former partner and other Department members. He made false reports and accessed sensitive Department data for personal use." (Id. at 13). The defendant also contends that "[e]ach witness

agreed that they would be upset if another Department member had taken their PC login number and password and used it to alter information in Department databases." (Id. at 15).

The findings and conclusions of an administrative agency on questions of fact are held to be prima facie true and correct. (See 735 ILCS 5/3-110; AFSCME Council 31 v. Ill. State Labor Relations Board, 216 Ill. 2d 569, 577 (2005); Robbins v. Board of Trustees of the Carbondale Police Pension Fund, 177 Ill. 2d 533, 538 (1997)). Those findings and conclusions are to be upheld on review unless they are against the manifest weight of the evidence. Marconi v. The Chicago Heights Police Pension Board, 225 Ill. 2d 497, 534 (2006); Abrahamson v. Ill. Dept. Of Prof. Reg., 153 Ill. 2d 76, 88 (1992); Iwanski v. Streamwood Police Pension Board, 232 Ill. App. 3d 180, 184 (1st Dist. 1992). If the administrative record contains some competent evidence that supports the agency's decision, the decision should be upheld. Abrahamson, 153 Ill. 2d at 88.

"A court's scope of review of an administrative agency's decision regarding discharge is a two-step process." Departmental of Mental Health & Developmental Disabilities v. The Civil Service Commission, 85 Ill. 2d 547, 550 (1981) quoted in Walsh v. The Board of Fire and Police Commissioners of the Village of Orland Park, 96 Ill. 2d 101, 105 (1983). "First, the court must determine whether the agency's finding of guilt is contrary to the manifest weight of the evidence" and the "second step in the court's analysis is to determine if the findings of fact provide a sufficient basis that cause for discharge does or does not exist." 85 Ill. 2d at 551 quoted in Walsh, 96 Ill. 2d at 105.

"Cause" has been defined as "some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his not longer occupying the place." (See Fantozzi v. Board of Fire and

Police Commissioners, 27 Ill. 2d 357, 360 (1963) quoted in Launius v. The Board of Fire and Police Commissioners of the City of Des Plaines, 151 Ill. 2d 419, 435 (1992)). In reviewing a termination decision, the "question is whether, in view of the circumstances presented, this court can say that the Civil Service Commission, in opting for discharge, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the service." (Sutton v. Civil Service Commission, 91 Ill. 2d 404, 411 (1982) quoted in Launius, 151 Ill. 2d at 436; see also Walsh).

As stated above, in the case sub judice, plaintiff does not appear to be challenging whether the hearing officer's findings on the proven violations of the charges are against the manifest weight of the evidence. Rather, the essence of plaintiff's claim for relief is that the discipline imposed was unreasonable, arbitrary or not related to the needs of service. (See R. tr. 100-104).

The Board's Decision terminating plaintiff does not specify the basis for the determination of "cause" for plaintiff's discharge and instead appears simply to order plaintiff's discharge. (See Board's Decision). The hearing officer's findings and conclusion which were adopted by the Board merely indicate that "cause exists for the discharge" of plaintiff without specifying any evidentiary inference in the record that supports the "cause" determination under applicable law. (See hearing officer's findings). Although it is argued that plaintiff's "continuance" in employment was "detrimental to the discipline and efficiency of service" of the Department, there is no specific reference made to the record to support the argument or to any testimony indicating that plaintiff should not be reinstated but that discharge is appropriate.

While defendant contends that "each of the character witnesses, on cross-examination, testified that they would be upset if another Department member used their PC login number and

password to make changes or false reports in a Department database," defendant does not reference any specific indication in the record that any of these individuals would not be inclined to work with plaintiff again. (See defendant's response at 14-15). On the other hand, plaintiff has referred to certain portions of the record to support his contention that "they would still work" with him, even after stating "they would be upset if someone used their PC login password and entered false information into a restricted database." (See plaintiff's reply at 5). For example, Wendy Issac, for whom plaintiff worked at Central Detention, indicated that she had known about the nature of the charges against plaintiff and stated that "she would have no problem" with plaintiff returning to his position. (See R. tr. 53). She stated that plaintiff "was a hard worker. He did everything that was asked of him and he volunteered to help others. He was a good employee." (See R. tr. 50). Also, James Wilson, a former partner of plaintiff while both were on active patrol, indicated that he was aware of the nature of the charges against plaintiff, and stated "I would work with him tomorrow if we had to go back on patrol." (See R. tr. 85). Wilson also stated "I found him to be an outstanding partner. He was the kind of person I wanted to work with. I always felt that when we were in any type of situation, from a man with a gun call to a domestic, I always thought that John would have my back, and he would be very capable of handling any situation, and he exhibited street smarts and common sense." (See R. tr. 83-84). Moreover, Sergeant John Hroma, a former supervisor during two segments of plaintiff's career and who knew plaintiff altered information in a data base that he did not have access to, testified that he would work with plaintiff in the future and stated "All [of the] time that John was with me, he did a fantastic job. Anything I needed him to do, he was right on it." (See R. tr. 91). In addition, Captain Michael Alexander, plaintiff's supervisor at the time of the incident and who knew about the investigation, stated that "I found him to be very diligent, professional

in his dealings I had with him, and professional in dealings that he had with the public." (See R. tr. 66-73). There is no indication in the record that other officers, who appeared at the hearing, were unwilling to work with plaintiff. Sergeant Dale Nowaczyk, a former supervisor of plaintiff when he was a beat officer and who was unaware of the nature of the present charges, testified that if plaintiff were reinstated "it would be an honor to work with him and supervise him. He was an outstanding officer." (See R. tr. 79). After being informed of the charges, Nowaczyk stated "Well, I wouldn't judge somebody based upon [one] action." (See R. tr. 81). Margaret Susnis, a former partner of plaintiff, who was unaware of the nature of the present charges, testified "He's a very good officer, very aware of what's going on outside, very good on the computers and making arrests." (See R. tr. 96-97). When informed of the charges against plaintiff, there is no indication in the record that Susnis' opinion of plaintiff would have been different. It is also not insignificant that Sophia Straka, plaintiff's partner whose PC login number was used by plaintiff, responded "yes" to a question that plaintiff "was a good worker" and "absolutely" to a question that plaintiff was "a hard worker" and "dependable." (See R. tr. 42-44).

Plaintiff became a member of the Department in 1993. (See R. tr. 15). It is undisputed in the record that prior disciplinary action has not been imposed against plaintiff. Plaintiff pointed out that he has received a Department Commendation, 4 complimentary letters, 38 honorable mentions, and 3 emblems of recognition. (See ex. B to defendant's answer).

This court recognizes that the Board's finding of "cause" for discharge is entitled to considerable deference, and is to be overturned only if it is arbitrary, unreasonable or "unrelated to the requirements of the service." Walsh, 96 Ill. 2d at 105-06. The question is not whether the reviewing court would "decide upon a more lenient sanction . . . were it to determine initially

what discipline would be appropriate . . . . The question is whether, in view of the circumstances presented, [the] court can say that the [board], in opting for discharge, acted unreasonably or arbitrarily or selected a type of discipline unrelated to the needs of the service." Launius, 151 Ill. 2d at 436. Although plaintiff's misconduct justified the imposition of appropriate discipline, he has argued persuasively that he accepted responsibility for the violative acts and cooperated with the investigation of him. It is a relevant consideration that plaintiff has shown his conduct did not injure anyone or put another person at risk of being harmed. Plaintiff has further established that there are mitigating circumstances that the Board should have considered for an appropriate discipline to be imposed. The record lacks support for a finding that "cause" existed to terminate him. A convincing showing has been made that plaintiff's discharge is unreasonable and "unrelated to the requirements of service." (See Launius, 151 Ill. 2d 419; Walsh, 96 Ill. 2d 101; see also generally Kirsch v. Ruckford, 55 Ill. App. 3d 1042, 1046 (1st Dist. 1997)).

IT IS HEREBY ORDERED, based upon the foregoing, the parties' submissions and administrative record, that:

plaintiff's complaint is granted in part and the termination of plaintiff is reversed but other discipline may be imposed for the proven charges. This matter is remanded to the Board for the imposition of discipline, other than termination, and may include an extended suspension and reinstatement only upon such conditions that the Board finds based upon the record are reasonable and appropriate.

Dated: September 2009

Entered:

ENTERED
SEP 2009
JUDGE
RICHARD J. BILLIK - 1585

Richard J. Billik, Jr., Judge

08-2698

Order (2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

John DeHorta
Plaintiff

v.

Jerry Weis et. al.
Defendants

No. 09 CH 13571

ORDER

This cause coming before this Court today on Defendant Weis' Motion in Support of Request for Administrative Review of the Police Board's Order on Remand of an Order dated November 19, 2009 but parties present through Counsel and the Court being advised of the premises, IT IS HEREBY ORDERED: 1) Defendant's Motion to Review Police Board's Order on Remand is respectfully denied. 2) The Police Board's Memorandum and Order of November 19, 2009 is sustained in accordance with the Court's Ruling a copy of which is attached and incorporated herein. 3) This is a Final Order

Atty. No.: 90909

Name: Hilina T. Tamrat

Atty. for: Defendant Weis

Address: 30 N. LaSalle #1040

City/State/Zip: Chicago IL 60602

Telephone: 312 744 3447

ENTERED:

Dated: _____, _____

ENTERED
MAY 27 2010

Judge Richard J. Billik, Jr.
Circuit Court-1585

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

John Dellorto v. Jody P. Weis, Superintendent of the
Chicago Police Department, and the City of Chicago Police Board
09CH13571

RULING

This cause coming before the court on a "Motion to Review Police Board's Order on Remand" filed by the defendant Jody P. Weis, superintendent of police of the City of Chicago ("Weis" or "defendant"); a response having been filed by plaintiff John Dellorto ("Dellorto" or "plaintiff") and a reply thereto; a hearing having been held; and the court, being fully advised in the matter, finds and/or states:

Plaintiff has been employed by the City of Chicago Police Department ("Department") as a police officer since 1993. On or about August 28, 2008, defendant filed charges with the Police Board of the City of Chicago ("Police Board") seeking termination of plaintiff for violating certain Rules and Regulations of the Department. The Police Board conducted a hearing on January 23, 2009, and on February 25, 2009 issued a decision ("Decision") adopting the findings of the hearing officer and discharging plaintiff from the Department. (See Decision of February 25, 2009).

On March 26, 2009, plaintiff filed a petition for administrative review of the Police Board's Decision. On September 30, 2009, this court issued an order ("Order") reversing the termination of plaintiff but found that "other discipline may be imposed for the proven charges." (See Order of September 30, 2009 at 8). This court stated that "the record lacks support for a finding that "cause" existed to terminate plaintiff." (Id.). This court remanded the matter to the Police Board "for the imposition of discipline, other than termination," that could include "an extended suspension and reinstatement only upon such conditions that the Board finds based upon the record are reasonable and appropriate." (Id.).

On November 19, 2009, the Police Board issued a new order ("Memorandum and Order") suspending plaintiff for a period of three years, from September 3, 2008, to and including September

11, 2011. (See Memorandum and Order of November 19, 2009 attached as ex. C to defendant's memorandum in support).

Defendant argues that this court should review the Police Board's Memorandum and Order of November 19, 2009 "on the grounds that the penalty is arbitrary, capricious and unrelated to the needs of service." (See defendant's motion at ¶7). Plaintiff submits, in his brief in response, that this court "uphold the Police Board's [Memorandum and Order] entered on November 19, 2009 imposing a suspension of three years and deny the Superintendent's request for administrative review . . . ." (See plaintiff's brief in response at 6).

The Police Board's Memorandum and Order of November 19, 2009 is consistent with the Order remanding the matter to the Police Board for "imposition of discipline other than termination" including the possibility of "an extended suspension." (See Order of September 30, 2009). Therefore, defendant has not persuasively shown that this court should review the Memorandum and Order of November 19, 2009 "on the grounds that the penalty is arbitrary, capricious and unrelated to the needs of service," and grant the defendant the relief being sought.

IT IS HEREBY ORDERED, based upon the foregoing, the administrative record, the parties' submissions, and the applicable law, that:

defendant's "Motion to Review Police Board's Order on Remand" is, respectfully, denied; and the Memorandum and Order of November 19, 2009 providing for a suspension is sustained.

DATED: May 2010

ENTERED:

ENTERED

MAY 27 2010

Richard J. Billik, Jr., Judge

Judge Richard J. Billik, Jr.
Circuit Court-1585